IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1016
73-1095

JOHN LASCARIS, individually and as Commissioner of the Department of Social Services of the County of Onondaga,

Appellant,

—*v.*—

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KRISTEN WYNN, and on behalf of all others similarly situated,

Appellees,

and

ABE LAVINE, individually and as Commissioner of the Department of Social Services of the State of New York,

Appellant.

Appeal from the United States District Court for the Northern District of New York

BRIEF FOR THE APPELLANT LASCARIS

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BRIEF FOR THE APPELLANT LASCARIS

OPINION BELOW

The opinion of the District Court is not yet reported. It is set forth in Appellant's Jurisdictional Statement, Appendix "A", pp. 1a-17a.

JURISDICTION

The appeal herein is from a final order made and entered in the United States District Court for the Northern District of New York by a specially constituted three-judge panel convened therein under 28 U.S.C. §§2281, 2284. The order granted summary judgment declaring that a portion of §101-a of the New York Social Services Law (McKinney Supp. 1973), as amended, violates the federal Social Security Act and permanently enjoined the defendants from denying or terminating AFDC assistance to plaintiff Anna Stuck or her minor children for failure to cooperate in obtaining support from an absent parent of her children. In substance, then, the final order enjoins the defendants from enforcing the state statute against the plaintiff, Anna Stuck.

This Court has jurisdiction to review the final judgment by direct appeal pursuant to 28 U.S.C. §1253, and this Court noted probable jurisdiction on June 10, 1974. The complaint pleaded a substantial constitutional question within the broad definition laid down by this Court in *Hagans* v. *Lavine*, — U.S. — , 94 S. Ct. 1372 (1974). Moreover, this Court has sustained its jurisdiction to review judgments of other three-judge district courts on direct appeal in cases enjoining enforcement of state statutes or regulations denying AFDC due to the non-cooperation of the parent-caretaker. *Carleson* v. *Taylor*, 404 U.S. 980 (1971); *Juras* v. *Meyers*, 404 U.S. 803 (1971); *Weaver* v. *Doe*, 404 U.S. 987 (1971).

QUESTIONS PRESENTED

Whether, consistently with the Social Security Act, a state may issue a grant of aid to families with dependent children (AFDC) only for the needs of the minor children when the mother-caretaker refuses to assist the state in its efforts to establish paternity and support.

Whether a regulation promulgated by the Secretary of Health, Education and Welfare authorizing a state to deny aid to a non-cooperating parent or caretaker, though not to such person's child, is contrary to the Social Security Act.

STATUTES INVOLVED

The relevant provisions of the Social Security Act, 42 U.S.C. 602(a)(7), (11), (17), (18), (21), (22) and 606(a) are set forth in the Appendix.

The relevant provisions of the New York State Social Services Law Section 101 and 101(a) and the New York State Family Court Act Sections 413, 414, 415 and 513 are set forth in the Appendix.

STATEMENT OF THE CASE

On December 11, 1972, this Court vacated the prior judgment in this action and remanded the case to the District Court "for further consideration in light of Chapter 687 of the 1972 Laws of New York (N.Y. Soc. Serv. Law §101-a, as amended)." *Lavine* v. *Shirley*, 409 U.S. 1052 (1972).

Upon the remand, plaintiffs' attorney moved on behalf of Anna Stuck and her minor children for leave to intervene as a plaintiff, and also moved for leave to file an amended complaint. Both motions were granted over objection.

The amended complaint did not reallege any facts concerning the original named plaintiffs. As the District Court found in its opinion (Appendix "A", of the Jurisdictional Statement of Appellant, Lascaris, p. 3a) "This omission was by design since they no longer feel themselves aggrieved due to intervening events. In its present posture, then, this is an action by Anna Stuck on behalf of herself, her minor children, and all others similarly situated, seeking declaratory and injunctive relief from

enforcement against them of §101-a of the New York Social Services Law because of their failure to cooperate in support proceedings as required by the section, and seeking as well the payment of benefits withheld on authority of the section."

The amended complaint contains two causes of action. The first cause alleges that the state statute conflicts with the Federal Social Security Act. The second cause asserts an equal protection clause constitutional challenge. The constitutional violation is alleged in the second cause of action as follows:

> "Defendants' action in erecting an additional requirement of eligibility constitutes a denial of equal protection guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that it creates an invidious and unjustifiable distinction. New York's action in this case requires that impoverished mothers institute and cooperate in proceedings against their children's father; no such requirement is imposed on the well-to-do. Marriages of the well-to-do are not driven asunder by forcing one spouse to prosecute another. Classifications based on wealth have long been recognized as peculiarly obnoxious to the principles of equality enshrined in the Fourteenth Amendment."

Defendants, the New York State Commissioner of Social Services and the Onondaga County Commissioner of Social Services — that county being the residence of the intervenor Anna Stuck and her children — moved to dismiss the complaint for want of jurisdiction, contending that no substantial constitutional question was pleaded and that the issue as to the conflict with the Federal Social Security Act was not an independent basis for federal jurisdiction, either by a three-judge or single-judge district court. However, the three-judge district court denied that motion, finding that plaintiffs raised a substantial constitutional question which warranted the convening of a three-judge court (Appendix "A", Jurisdictional Statement of Appellant, Lascaris, p. 4a.)

The facts regarding intervenor Anna Stuck and her family may be stated briefly, as in the district court's opinion (Appendix "A", Jurisdictional Statement of Appellant, Lascaris, p. 3a.)

There had been no adjudication of paternity for one of her four children, and although she disclosed the name of the putative father and the town where he lived, she declined to give any further information, such as his correct address, although she conceded that she knew the address. Her reasons for refusing to give such information or to further cooperate in the paternity proceeding, which was never commenced since personal service of process could not be made, were that the putative father allegedly was unable to support the child because of physical disabilities, and because she had unpleasant experiences in other paternity proceedings against the father of her other three children.

Anna Stuck was afforded a "fair hearing" — an administrative hearing before the State Department of Social Services — and the decision by Commissioner Lascaris to exclude Anna Stuck from the AFDC grant for her children was affirmed. The fair hearing decision is in the record, as an exhibit to defendants' motion to dismiss.

It bears emphasis that all four of Anna Stuck's children remained eligible for AFDC and that only assistance for Anna Stuck herself, as the parent-caretaker of the children, was denied by the defendants.[1/]

1/ More specifically, the monetary AFDC allowance in New York State consists of a fixed "pre-added" allowance for "all items of need except shelter", plus a separate shelter allowance varying from county to county. (18 N.Y. Official Code of Rules and Regulations 352.1 - 352.3). This pre-added allowance is predicated upon the number of persons in the family and was reduced by one person to reflect the denial of assistance to Anna Stuck. The shelter allowance was reduced by one-fifth to reflect that one of the five persons in the household was not entitled to public assistance for herself. The denial of assistance to Anna Stuck amounted to about $75.00 to $100.00 per month (Appendix "A", Jurisdictional Statement of Appellant, Lascaris, p. 4a.)

SUMMARY OF ARGUMENT

The Social Security Act should be read to permit states to require parental cooperation in paternity and support proceedings as a condition of AFDC eligibility, because such eligibility requirements do not conflict with any express provision of the Act and also because such requirements are consistent with the federal statute and, indeed, are the most realistic and feasible means of complying with federal statutory requirements.

ARGUMENT

The injunction issued by the District Court frustrates important federal and state policies. The Social Security Act directs the states to establish paternity and secure support from absent parents. 42 U.S.C. §602(a)(17)(A). The assumption that the states can comply with this federal requirement without the cooperation of the parent-caretaker is plainly incorrect. An action to establish paternity cannot be commenced or successfully completed without identifying and locating the putative father and without the mother's testimony in support of a paternity petition. This identification and location, together with the requisite proof concerning conception, are, in virtually every case, within the exclusive knowledge of the mother.

In support matters, where paternity has been established or the child has been born in wedlock and support is sought from the deserting parent, independent evidence may be available as to the name of the responsible relative. However, without the cooperation of the mother in locating the absent father and providing identification of him in court, support orders will not be obtainable in the vast majority of cases. At the very least, the states will be required to expend much more time and effort in pursuing such support than would otherwise be necessary with the cooperation of the parent-caretaker.

In New York State, as in many other states, the primary responsibility for the support of children is with their parents.

not with the state. N.Y. Social Services Law, §101 (McKinney 1966); N.Y. Family Court Act, §§413-415 (McKinney Supp. 1973) and N.Y. Family Court Act, §513 (McKinney 1963).

It is hardly necessary to examine any legislative history to determine the justification for pursuing paternity and support. Every dollar of support paid by the absent parent of a child reduces the child's need for AFDC. Here, then, is a fundamental state policy, with which federal policy is obviously consistent, that federal and state welfare funds should be paid only for those children whose parents cannot otherwise support them, and that every legitimate effort should be expended to collect support from those primarily responsible.

There is a second important federal and state policy which is furthered by an examination of the parent-caretaker as to the location of the "absent" parent. Under the Social Security Act, one of the parents of the needy child must be absent from the home (except in the case of certain unemployed fathers residing in the home). 42 U.S.C. §606(a). Although the states might merely ask the parent-caretaker whether the other parent is living in the home or "somewhere else", it is much more logical for the states to pursue the issue in greater depth by determining, wherever possible, exactly where the absent parent is in fact living. At least the states ought to be able to obtain that information from the parent-caretaker where that parent has such knowledge. Surely, Congress never intended a mother applying for AFDC to be privileged to tell the State Welfare Department that her spouse is outside of her home, and that she knows his residence, but that she refuses to disclose it. Yet, this is the very effect of the judgment appealed from, because no court which has focused upon this issue has yet suggested even one other practical means of compelling the parent with such knowledge to disclose it.

In short, the construction by the court below of the Social Security Act assumes that Congress intended to require the states to obtain information concerning the location of allegedly absent parents, both for purposes of determining eligibility for AFDC and the extent of need, while at the same time precluding

the states from employing the most realistic source of such information. Surely, Congress never so intended and, just as surely, no previous decision of this court requires such a construction of the Social Security Act.

In its memorandum to this court as *amicus curiae*, the United States has demonstrated that decisions of this court in *Carleson* v. *Remillard*, 406 U.S. 598 (1971), *Townsend* v. *Swank*, 404 U.S. 282 (1971) and *King* v. *Smith*, 392 U.S. 309 (1968), involved state eligibility standards which conflicted with express definitions in the Social Security Act. On the other hand, in *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405 (1973), this court held that the Social Security Act "allows for complimentary state work incentive programs and procedures incident thereto—even if they become conditions for continued assistance. Such programs and procedures are not necessarily invalid, any more than other supplementary regulations promulgated within the legitimate sphere of state administration." 413 U.S. at 422.

The Secretary of Health, Education and Welfare has properly read the *Dublino* decision as authorizing a state to "establish, as a condition for including a parent's needs in his family's AFDC grant, a requirement that the parent of an AFDC child assist in establishing the paternity of a child born out of wedlock or in seeking support from a person having a legal duty to support the child." 39 Fed. Reg. 16363 (May 8, 1974). The secretary's construction of the relevant cases is most pertinent:

> "In *New York State Department of Social Services* v. *Dublino* 413 U.S. 405 (1973), the Court upheld a New York statutory scheme which permits the exclusion from the State's AFDC program of individuals eligible under the standards set forth in the definitional sections of title IV-A of the Act. The *Dublino* decision is important for it clarified the Court's previously ambiguous views with respect to the authority of States to impose their own conditions of eligibility for public assistance. First, the Court was careful to reaffirm the Federal State nature of the public assistance programs, stating that States must be permitted 'considerable latitude' in attempting to resolve their increasing fiscal

> problems, including 'the critical problem of mounting welfare costs and the increasing financial dependence of many of [their] citizens.' 413 U.S., at 413. In addition, the Court firmly indicated that Congressional authorization for the States to exclude individuals covered under the Act exists in areas beyond the work incentive context. Citing *Wyman* v. *James* and *Snell* v. *Wyman*, the Court found that State regulations 'promulgated within the legitimate sphere of State administration' — 'even if they become conditions for continued assistance' — are not nessarily invalid under the Act, as construed in *Townsend* v. *Swank*, 413 U.S., at 422. Hence, in *Dublino* the Court indicated that States are not barred by the Act from imposing eligibility conditions which are not contained in the Act upon individuals eligible for assistance under Federal standards. Indeed, *Dublino* affirmed the States' discretion to impose such eligibility conditions as long as they assist the States in the efficient administration of their AFDC programs or further an independent State welfare policy and are not inconsistent with the provisions and purposes of the Social Security Act."

The district courts that have struck down state requirements of cooperation have distinguished earlier decisions of this Court in *Wyman* v. *James*, 400 U.S. 309 (1971) and *Snell* v. *Wyman*, 393 U.S. 323 (1969). However, in the *Dublino* case, this Court cited *James* and *Snell* in support of the proposition that the states may promulgate supplementary regulations even if they become conditions of eligibility.

The three summary affirmances by this Court, in *Juras* v. *Meyers*, 404 U.S. 803 (1971), *Weaver* v. *Doe*, 404 U.S. 987 (1971) and *Carleson* v. *Taylor*, 404 U.S. 980 (1971), all involved denials of aid to the dependent children as well as to the non-cooperating mother. Thus, those decisions may fairly be read as holding no more than the Congress intended that the mothers' non-cooperation should not directly justify denial of all aid and assistance to the dependent children.

Moreover, the three summary affirmances obviously "are not of the same precedential value as would be an opinion of this Court treating the question on the merits." *Edelman* v. *Jordan*, — U.S. —, 94 S. Ct. 1347, 1359 (1974).

Furthermore, those decisions were handed down at a time when the regulations of HEW were being construed, at least by the lower courts, as precluding denial of aid to the parent-caretaker and the minor children. The district courts could find no HEW regulation expressly authorizing denial of aid to the uncooperative parent-caretaker. Accordingly, this court may have regarded those decisions as giving effect to HEW policy, a judicial practice applied by this court to HEW regulations in *Lewis* v. *Martin*, 397 U.S. 552, 559 (1970). On the other hand, HEW now has taken an official position approving denial of aid to the uncooperative parent-caretaker, and so for the first time this court is presented with a district court decision that expressly invalidates the HEW regulation, rather than allegedly supporting HEW policy.

It is submitted that the federal courts should not preclude the states from requiring the assistance of parents in locating and prosecuting legally responsible relatives, even by making cooperation a condition of the parents' eligibility for welfare benefits. The judgment of the court below is contrary to the spirit of the Social Security Act which is "a scheme of cooperative federalism." *King* v. *Smith*, 392 U.S. 309, 316 (1968).

The policy of the State of New York to require cooperation of parents in paternity and support proceedings, as a condition of their eligibility for AFDC, does not defeat any congressional goals and does not violate any specific requirements of the Social Security Act. [cf. *Shea* v. *Vialpando*, — U.S. —, 94 S. Ct. 1746 (1974)].

CONCLUSION

The judgment of the district court should be reversed and the New York State Social Services Law should be declared constitutional and consistent with the federal Social Security Act.

Respectfully submitted,

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July, 1974.

APPENDIX.

42 U.S.C. §602 — Public Health and Welfare.

§602. State plans for aid and services to needy families with children; contents; approval by Secretary

(a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for the financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community services aids, in the administration of the plan and for the use of non-paid or partially paid volunteers and a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to

42 U.S.C. §602 — Public Health and Welfare.

assure the correctness and verification of such report; (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of such income; (8) provide that, in making the determination under clause (7), the State agency --

(A) shall with respect to any month disregard --

(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $30 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b) (2) and (3) of this title); and

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(B) (i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of an independent child, and

(ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than $5 per month of any income;

except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of --

(C) any one of the persons specified in clause (ii) of subparagraph (A) if such person --

(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary; or

(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; of

(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause (7) (without regard to clause (8)), unless, for any one of

the four months preceding such month, the needs of such persons were met by the furnishing of aid under the plan;

(9) provide safeguards which were restrict the use or disclosure information concerning applicants and recipients to purposes directly connected with the administration of aid to families with dependent children; (10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1952, provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid to families with dependent children in respect of a child who has been deserted or abandoned by a parent; (12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title; (13) provide a description of the services which the State agency makes available to maintain and strengthen family life for children, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; (14) provide for the development and application of a program for such family services, as defined in section 606 (d) of this title, and child-welfare services, as defined in section 625 of this title, for each child and relative who receives aid to families with dependent children, and each appropriate individual (living in the same home as a relative or child receiving such aid whose needs are taken into account in making the determination under clause (7)), as may be necessary in the light of the

particular home conditions and other needs of such child, relative, and individual, in order to assist such child, relative, and individual to attain or retain capabilities for self-support and care in order to maintain and strengthen family life and to foster child development; (15) provide (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), for preventing or reducing the incidents of births out of wedlock and otherwise strengthening family life, and for implementing such programs by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this clause or clause (14) are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services; (16) provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have; (17) provide --

(A) for the development and implementation of a program under which the State agency will undertake --

(i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and

(ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and

(B) for the establishment of a single organizational unit in the State agency or local agency administering the State plan in each political subdivision which will be responsible for the administration of the program referred to in clause (A);

(18) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the State agency in administering the program referred to in clause (17) (A), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the State agency or local agency administering the State plan; (19) provide --

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is --

42 U.S.C. §602 — Public Health and Welfare.

(i) a child who is under age 16 or attending school full time;

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

(v) a mother or other relative of a child under the age of six who is caring for the child; or

(vi) the mother or other female caretaker of a child, if the father or other adult male relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under work incentive program or accept employment as described in subparagraph (F) of this paragraph);

and that any individual referred to in clause (v) shall be advised of her option to register, if she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to her in the event she should decide so to register;

(B) that aid under the plan will not be denied by reason of such registration or the individual's certification to the Secretary of Labor under subparagraph (G) of this paragraph, or by reason of an individual's participation on a project under the program established by Section 632(b) (2) or (3) of this title;

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 10 per centum of the cost of such programs, as specified in section 635(b) of this title;

(D) that (i) training incentives authorized under section 634 of this title, and income derived from a special work project under the program established by section 632 (b) (3) of this title shall be disregarded in determining the needs of an individual under section 602(a)(7) of this title, and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 632 (b)(2) or (3) of this title shall be taken into account;

(E) Repealed. Pub. L. 92-223, § 3(a) (5), Dec. 28, 1971, 85 Stat. 804.

(F) that if and for so long as any child, relative, or individual (certified to the Secretary of Labor pursuant to subparagraph (G)) has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment --

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7),

42 U.S.C. §602 — Public Health and Welfare.

and aid for any dependent child in the family in the form of payments of the type described in section 606 (b) (2) of this title (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 608 of this title will be made:

(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

(iv) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under clause (7);

except that the State agency shall, for a period of sixty days, make payments of the type described in section 606(b)(2) of this title (without regard to clauses (A) through (E) thereof) on behalf of the relative specified in clause (i), or continue aid in the case of a child specified in clause (ii) or (iii), or take the individual's needs into account in the case of an individual specified in clause (iv), but only if during such period such child, relative, or individual accepts counseling or other services (which the State agency shall make available to such child, relative, or individual) aimed at persuading such relative, child, or individual, as the case may be, to participate in such program in accordance with the determination of the Secretary of Labor; and

(G) that the State agency will have in effect a special program which (i) will be administered by a separate administrative unit and the employees of which will,

to the maximum extent feasible, perform service only in connection with the administration of such program, (ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A), in accordance with the order of priority listed in section 633(a) of this title, such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training under part C, and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under Part C, (iii) will participate in the development of operational and employability plans under section 633 (b) of this title; and (iv) provides for purposes of clause (ii), that, when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available;

(20) effective July 1, 1969, provide for aid to families with dependent children in the form of foster care in accordance with section 608 of this title; (21) provide that the State agency will report to the Secretary, at such times (not less often than once each calendar quarter) and in such manner as the Secretary may prescribe --

(A) the name, and social security account number, if known, of each parent of a dependent child or children with respect to whom aid is being provided under the State plan --

(i) against whom an order for the support and maintenance of such child or children has been issued by a court of competent jurisdiction but who is not making payments in compliance or partial compliance with such order, or against whom a petition for such an order has been filed in a court having jurisdiction to receive such petition, and

(ii) whom it has been unable to locate after requesting and utilizing information included in the files of the Department of Health, Education, and Welfare maintain pursuant to Section 405 of this title,

(B) the last known address of such parent and any information it has with respect to the date on which such parent could last be located at such address, and

(C) such other information as the Secretary will specify to assist in carrying out the provisions of section 610 of this title;

(22) provide that the State agency will, in accordance with standards prescribed by the Secretary, cooperate with the State agency administering or supervising the administration of the plan of another State under this part --

(A) in locating a parent residing in such State (whether or not permanently) against whom a petition has been filed in a court of competent jurisdiction of such other State for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State, and

(B) in securing compliance or good faith partial compliance by a parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State;

and, (23) provide that by July 1, 1969, the amounts used

by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted; and (24) if an individual is receiving benefits under subchapter XVI of this chapter, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter.

42 U.S.C. §606 — Public Health and Welfare.

§606. Definitions

When used in this part —

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

New York State Social Welfare Law, §101 and §101-a.

§101. Liability of relatives to support

1. The spouse or parent of a recipient of public assistance or care or of a person liable to become in need thereof shall, if of sufficient ability, be responsible for the support of such person, provided that a parent shall be responsible only for the support of a minor child. Step-parents shall in like manner be responsible for the support of minor step-children.

2. The liability imposed by this section shall be for the benefit of the public welfare district concerned or any legally incorporated non-profit institution which receives payments from any governmental agency for the care of medically indigent persons, and such liability may be enforced by appropriate proceedings and actions in a court of competent jurisdiction. Such proceedings and actions may be brought by such an institution in any court wherein a similar proceeding or action could be brought by a public welfare official. L. 1940, c. 619, §10; amended L. 1945, c. 656, §1; L. 1960, c. 1088; L. 1965, c. 52, §1; L. 1966, c. 256, §18 eff. April 30, 1966.

§101-a. Proceedings to compel support by persons in need thereof

1. A recipient of public assistance or care or a person liable to become in need thereof may bring proceedings in a court of competent jurisdiction against any person responsible for his or her support as provided in section one hundred one of this chapter to compel any such person so responsible to provide for or contribute to such support.

2. An applicant or recipient of public assistance who is the parent of a child or minor shall assist and cooperate with the social services official and appropriate authorities to obtain support or contributions to support for such child or spouse from the other parent or spouse by:

(a) Furnishing the social services official with appropriate information including the location of the other parent or spouse.

(b) Filing a petition and furnishing evidence in a proceeding for the establishment of the child's paternity and support under article five of the family court act. [1]

(c) Filing a petition and furnishing evidence in a proceeding to secure support for her child and herself under article four of the family court act. [2]

3. In the event an applicant or recipient of public assistance fails to institute a proceeding in accordance with the provisions of this section or other similar provisions of law, the social services official shall institute such proceeding under the appropriate provisions of the family court act and if such applicant or recipient willfully fails or refuses to furnish evidence necessary to support such petition, or furnish information relative to the location of the other parent, the social services official shall not provide or continue to provide assistance or care for the maintenance of such applicant or recipient so long as such applicant or recipient fails to assist or cooperate as required by the provisions of this section or other provisions of law.

As amended L. 1972, c. 687, §1.

New York State Family Court Act, §§413, 414, 415 and 513.

§413. Father's duty to support child

The father of a minor child is chargeable with the support of his child and, if possessed of sufficient means or able to earn such means, may be required to pay for his support a fair and reasonable sum according to his means, as the court may determine. As amended L. 1966, c. 256, §44, eff. April 30, 1966.

L. 1966, c. 256, § 44, eff. April 30, 1966, inserted "minor" preceding "child."

§414. Mother's duty to support child; apportionment

If the father of a minor child is dead, incapable of supporting his child, or cannot be found within the state, the mother of such child is chargeable with its support and, if possessed of sufficient means or able to earn such means, may be required to pay for its support a fair and reasonable sum according to her means, as the court may determine. The court may apportion the costs of the support of the minor child between the parents according to their respective means and responsibilities. As amended L. 1966, c. 256, § 45, eff. April 30, 1966.

§415. Duties to support recipient of public assistance or welfare and patients in institutions in the department of mental hygiene

The spouse or parent of a recipient of public assistance or care or of a person liable to become in need thereof or of a patient in an institution in the department of mental hygiene, if of sufficient ability, is responsible for the support of such person or patient, provided that a parent shall be responsible only for the support of his minor child. In its discretion, the court may require any such person to contribute a fair and reasonable sum for the support of such relative and may apportion the costs of such support among such persons as may be just and appropriate in view of the needs of the petitioner and the

other circumstances of the case and their respective means. Step-parents shall in like manner be responsible for the support of minor children. As amended L. 1965, c. 674; L. 1966, c. 256, § 46, eff. April 30, 1966.

§513. Obligation of parents

Each parent of a child born out of wedlock is liable for the necessary support and education of the child and for the child's funeral expenses. If a parent dies, an order of support or a judicially approved settlement made prior to that parent's death shall be enforceable as a claim against the deceased parent's estate in an amount to be determined by the surrogate's court not greater than is provided in said order or settlement, having regard to the age of the child, the ability of the surviving parent to support and educate it, the amount of property left by the deceased parent and the number, age and financial condition of those other persons entitled to support by the deceased parent during his or her lifetime.

18 New York Code of Rules and Regulations, §§352.1-3.

Section 352.1 Standard of need for determining eligibility. The eligibility for public assistance of all persons who constitute or are members of a family household shall be determined by a social services district by applying the following Statewide standard of monthly need which shall consist of:

(a) regular recurring monthly needs, exclusive of shelter and fuel for heating, in accordance with the following schedule:

SCHEDULE SA-1
STATEWIDE STANDARD OF NEED

Number of Persons in Household						
One	Two	Three	Four	Five	Six	Each Additional Person
$84	134	179	231	284	329	45

(b) plus the amount of money for shelter and fuel for heating required monthly for such persons in accordance with provisions of law, board rule and department regulations: and

(c) for any of such persons who may because of their case circumstances require any of the following items in accordance with applicable provisions of law, board rules and department regulations, the standard of need shall include the cost of the required item or items in accordance with such provisions: furniture and furnishings for the establishment of a home, essential repair of heating equipment, furnishings for the establishment of a home, essential repair of heating equipment, cooking stoves and refrigerators, additional cost of meals for persons unable to prepare meals at home, replacement of clothing or furniture which has been lost in a fire, flood or other like catastrophe, occupational training, additional allowances in AABD, cost of services and supplies already received, miscellaneous shelter costs, day care, homemaker services, housekeeping services, camp fees and payment of life insurance premiums.

18 New York Code of Rules and Regulations, §§352.1-3.

352.2 Allowances and grants for persons who constitute or are members of a family household. (a) Each social services district shall utilize the applicable schedules of monthly grants and allowances as found in subdivision (e) to provide for all items of need, exclusive of:

(1) shelter;

(2) fuel for heating;

(3) additional cost of meals for persons who are unable to prepare meals at home;

(4) purchase of necessary and essential furniture required for the establishment of a home;

(5) replacement of necessary furniture and clothing for persons in need of public assistance who have suffered the loss of such items as the result of fire, flood or other like catastrophe;

(6) essential repair of heating equipment, cooking stoves and refrigerators;

(7) allowances for occupational training, and

(8) other items for which specific provision is otherwise made in this Part.

(b) For the purpose of such monthly grants and allowances a child or children or adults residing with self-maintaining nonlegally responsible relatives or friends, shall be considered as a separate household.

(c) For the purpose of such monthly grants and allowances children or adults residing with a SSI beneficiary, shall be considered as a separate household.

(d) Supplemental allowances and grants may not be made other than as authorized under the regulations nor in excess of established schedules. A special allowance and grant may be made to duplicate a grant already made

18 New York Code of Rules and Regulations, §§352.1-3.

because the cash has been lost or stolen; such duplicate allowance and grant is not reimbursable by the State.

(e) The montly grants and allowances shall be as follows:

SCHEDULE SA-2
STATEWIDE MONTHLY GRANTS AND ALLOWANCES
FOR ADC-VA-HR

Number of persons						
One	*Two*	*Three*	*Four*	*Five*	*Six*	*Each additional person*
$84	134	179	221	264	320	45

SCHEDULE SA-3
STATEWIDE MONTHLY GRANTS AND ALLOWANCES
FOR HR-VA-ADC

Number of Persons						
One	*Two*	*Three*	*Four*	*Five*	*Six*	*Each Additional Person*
$76	121	161	208	256	296	41

(e) When the income of an applicant or recipient is in excess of schedule SA-3 but less than SA-1, he shall continue to be eligible for the other items of need and the cost of services specified in department regulation section 352.1. Such excess income shall be applied toward the payment for other items of need, except those provided under the purchase of service provisions, medical assistance and food stamp programs.

(1) The amount of the basic allowance shall be determined in accordance with the following table:

18 New York Code of Rules and Regulations, §§352.1-3.

TABLE FOR COOPERATIVE BUDGETING
Allowances for Basic Needs

Number of Persons in Assistance Group	Cost Standard SA-1	One AABD Person in Group		Two AABD Persons in Group	
		AABD	ADC/HR	AABD	ADC/HR
1	$ 84	—	—	—	—
2	184	$67	$ 60	—	—
3	179	60	107	$119	$ 54
4	231	58	156	116	104
5	284	57	204	114	153
6	329	55	247	110	197
7	374	53	289	107	240
8	419	52	330	105	283
9	464	52	371	103	325
10	509	51	412	102	366

For all other families of different size or composition the following formula applies:

$\frac{n[X]}{N}$ rounded to nearest $ = amount to be allowed for AABD portion of the grant

$.90\left[(N-n)\frac{(X)}{N}\right]$ rounded to nearest $ = amount to be allowed for the ADC, HR portion of the grant.

n = Number of AABD persons in assistance group
X = The cost standard
N = The number of persons in assistance group

(2) Allowances for other items of need, such as the additional allowance for AABD, shall be applied to the appropriate cooperative case.

(3) All available and unrestricted income of an applicant or recipient shall be pro-rated and applied against his needs and the needs of his legally responsible relatives.

(4) Income received by an individual who is not legally responsible for other members of the public assistance household shall be applied only against his estimate of needs. The surplus shall not be applied to the cooperative case.

18 New York Code of Rules and Regulations, §§352.1-3.

352.3 Rent allowances.* [(a) Each social services district shall establish a monthly allowance schedule for rent based on the number of rooms, with or without heat, furniture and furnishings. Such allowance schedule shall provide a sufficient amount for all persons to obtain housing in accordance with standards of public health in the community. The schedule established shall be filed with the department. An allowance for rent shall be made in the amount actually paid by the recipient but not in excess of the appropriate maximum of such schedule.]

*(a) Each social services district shall provide an allowance for rent in the amount actually paid but not in excess of the appropriate maximum of such district in accordance with the following schedule:

18 New York Code of Rules and Regulations. §§352.1-3.

LOCAL AGENCY MAXIMUM MONTHLY SHELTER ALLOWANCES
WITHOUT HEAT BY FAMILY SIZE

	1	2	3	4	5	6	7	8
Albany	126	151	153	153	153	153	153	153
Allegany	88	105	106	106	106	106	106	106
Broome	101	121	136	136	136	136	136	136
Cattaraugus	69	84	93	93	93	93	93	93
Cayuga	78	94	94	109	106	114	114	114
Chautauqua	75	90	90	96	96	109	107	157
Chemung	74	87	91	94	101	113	120	120
Chenango	68	83	98	98	108	108	108	121
Clinton	58	71	78	88	92	92	93	93
Columbia	108	130	130	132	132	132	132	132
Cortland	87	105	106	130	151	151	151	161
Delaware	78	95	97	97	97	97	97	102
Dutchess	113	136	145	145	155	155	155	155
Erie	113	135	135	135	137	137	137	137
Essex	74	90	90	90	90	90	90	91
Franklin	60	73	73	80	80	80	80	80
Fulton	78	94	94	97	97	97	97	97
Genesee	97	116	116	116	116	116	116	171
Greene	88	106	108	110	110	110	110	110
Hamilton	56	70	78	79	89	97	103	113
Herkimer	122	147	147	147	147	147	147	147
Jefferson	56	70	78	79	89	97	103	113
Lewis	70	85	88	88	98	95	110	111
Livingston	77	93	93	93	93	93	93	93
Madison	105	127	127	127	127	127	127	127
Monroe	130	144	152	156	157	159	162	176
Montgomery	76	92	93	93	93	92	92	127
Nassau	139	154	215	245	271	285	333	355
New York City	117	140	160	164	174	209	261	261
Niagara	91	109	114	115	124	126	165	165
Oneida	76	93	96	101	107	118	130	130
Onondaga	106	127	127	127	139	159	159	159
Ontario	106	128	128	130	131	131	131	131
Orange	115	138	146	148	154	154	154	154
Orleans	79	96	101	101	101	101	101	101
Oswego	86	81	97	97	107	107	112	112
Otsego	96	116	116	116	116	116	116	125
Putnam	118	141	146	162	162	206	206	209
Rensselaer	84	102	102	102	102	102	102	131
Rockland	145	178	217	231	267	311	340	340
St. Lawrence	88	101	102	109	109	110	110	110
Saratoga	104	126	134	141	148	148	148	148
Schenectady	92	111	113	114	125	146	146	155
Schoharie	96	116	116	116	116	116	116	125
Schuyler	105	127	127	127	127	127	127	127
Seneca	76	90	90	96	96	100	107	157
Steuben	79	96	115	115	115	118	116	122
Suffolk	186	231	288	288	287	273	276	300
Sullivan	130	144	161	189	188	204	204	204
Tioga	67	82	95	95	95	95	99	99
Tompkins	108	130	137	141	146	168	163	184
Ulster	109	131	135	140	142	158	158	159
Warren	70	86	86	88	93	95	110	111
Washington	80	97	97	98	105	106	106	114
Wayne	96	116	116	116	116	116	116	116
Westchester	155	185	226	282	287	287	348	400
Wyoming	70	86	86	88	93	95	110	111
Yates	60	73	73	80	80	80	80	80

† Effective July 1, 1974 bracketed material deleted.
* Effective July 1, 1974 material inserted.

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18 New York Code of Rules and Regulations, §§352.1-3.

LOCAL AGENCY MAXIMUM MONTHLY SHELTER ALLOWANCES WITH HEAT BY FAMILY SIZE

	1	2	3	4	5	6	7	8+
Albany	143	166	173	180	181	182	185	186
Allegany	106	134	142	150	158	155	158	161
Broome	121	149	172	180	188	185	202	205
Cattaraugus	89	112	129	137	140	142	145	148
Cayuga	96	119	126	140	149	159	162	165
Chautauqua	88	103	104	112	113	119	126	177
Chemung	92	112	123	134	144	158	168	171
Chenango	98	111	134	142	155	157	160	170
Clinton	78	99	114	132	139	141	145	148
Columbia	126	155	162	172	175	177	180	185
Cortland	107	133	141	153	196	200	203	216
Delaware	98	123	133	141	144	146	149	157
Dutchess	131	161	175	185	198	200	203	206
Erie	126	149	153	158	162	168	194	185
Essex	97	134	130	144	147	150	151	155
Franklin	85	107	113	134	137	140	141	147
Fulton	98	122	130	141	144	146	149	152
Genesee	115	141	148	156	159	161	164	222
Greene	106	131	140	150	153	156	158	164
Hamilton	79	104	118	133	146	157	164	180
Herkimer	142	175	183	191	194	196	199	202
Jefferson	76	98	114	123	138	148	155	166
Lewis	90	113	122	132	140	144	162	166
Livingston	96	118	125	133	136	138	141	144
Madison	125	155	163	171	174	176	179	182
Monroe	136	160	174	184	187	190	196	213
Montgomery	98	120	128	136	139	141	144	152
Nassau	144	175	241	278	308	332	372	397
New York City	132	159	181	190	205	242	296	297
Niagara	104	132	130	136	148	169	190	193
Oneida	96	121	121	148	154	167	182	185
Onondaga	124	152	159	167	182	204	207	210
Ontario	124	153	160	170	174	176	179	183
Orange	133	168	177	188	197	199	202	205
Orleans	97	121	133	141	144	146	149	153
Oswego	84	106	130	137	150	152	160	168
Otsego	116	144	152	160	163	165	168	180
Putnam	136	166	178	202	206	253	256	260
Rensselaer	101	119	122	130	130	131	134	154
Rockland	160	194	243	294	302	348	379	382
St. Lawrence	103	129	136	148	156	159	162	165
Saratoga	134	168	170	185	195	197	200	208
Schenectady	169	128	133	141	153	175	178	188
Schoharie	116	144	152	160	168	165	166	180
Schuyler	123	152	159	167	170	172	178	178
Seneca	93	115	122	136	139	145	185	208
Steuben	99	123	151	159	162	165	168	187
Suffolk	201	243	289	281	302	310	314	313
Sullivan	140	172	197	213	230	233	236	239
Tioga	87	110	131	139	142	144	151	154
Tompkins	126	155	169	181	189	208	211	235
Ulster	127	154	167	180	186	208	206	210
Warren	90	113	122	130	140	144	162	166
Washington	98	122	129	138	145	151	154	165
Wayne	114	141	148	156	159	161	164	167
Westchester	170	206	252	265	322	294	287	342
Wyoming	90	113	122	132	140	144	168	184
Yates	78	96	106	120	123	126	128	131

(b) When the tenant recipient is obligated to pay for water as a separate charge, an allowance shall be made for the additional amount required to be paid.

(c) For children or adults in receipt of public assistance residing with a self-maintaining non-legally responsible relative or friend or a SSI beneficiary, the allowance for rent and/or other shelter costs shall be computed on a prorated basis but not in excess of the appropriate agency maximum for the number of people in the assistance grant.

(d) An allowance for rent shall be made for a period not in excess of 60 days, when essential to retain a housing accommodation to which a recipient temporarily receiving care in a medical facility may return upon discharge from such facility.

(e) An allowance for rent shall be made for recipients who are tenants of city, State or Federally-aided public housing in accordance with the following schedule except when a modified allowance is approved by the department for a specific housing authority:

Apartment size	*Monthly rent*
"0" Bedrooms	$ 65
1 Bedroom	77
2 Bedrooms	90
3 Bedrooms	101
4 Bedrooms	107
5 Bedrooms	110

When recipients of public assistance are residing with a nonpublic assistance tenant of record, the rent allowance shall be a prorata share of the above rent schedule, or modified rent schedule.

(f) Rent allowances for hotel/motel facilities. An allowance for shelter shall be made for recipients temporarily housed in hotel/motel facilities under the following circumstances:

(1) No other suitable housing either public or private is available to house the recipient.

(2) Hotel/motel accommodations without cooking facilities shall be utilized only when accommodations with such facilities are not available.

(3) The continued need for hotel/motel accommodations shall be reviewed, evaluated and authorized monthly by the social services district.

(4) At the end of the third calendar month and at monthly intervals thereafter a detailed report of such review and evaluation shall be prepared and kept on file by the social services district.

(g) Maximum reimbursable amount. (1) The maximum reimbursable amount for hotel/motel shelter costs shall be limited to $5 per day per person for a period not in excess of six months duration.

(2) Reimbursement on restaurant allowances provided for individuals temporarily residing in hotel/motel situations shall be limited to a six month period.

(h) When an employable recipient is required to receive his grant in person from the State Employment Service on a semi-monthly basis, the social services district may provide the full amount of any shelter allowance in one of the semi-monthly grants.